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Veröffentlichungsversion / Published Version
Zeitschriftenartikel / journal article

Empfohlene Zitierung / Suggested Citation:

Carp, R. (2013). On the nature of the Romanian political regime: reflections on the recent jurisprudence of the constitutional court. *Studia Politica: Romanian Political Science Review*, 13(3), 411-425. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-447247>

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On the Nature of the Romanian Political Regime

Reflections on the Recent Jurisprudence of the Constitutional Court

RADU CARP

The participation to the European Council, an issue that generated vivid debates during the summer of 2012 and it was one of the episodes that have amplified the conflict between the Prime Minister and the President which culminated with the suspension from office of the former and the referendum that invalidated the suspension, has led to the emergence of another topic that unfortunately did not benefit from the same intensity in the public debate: the nature of the Romanian political regime. Since the issue had not been permanently clarified within the public law doctrine, the Constitutional Court has added a new episode concerning the clarification of this regime. From the moment the Court was notified regarding the issue of the participation to the European Council, there were two options: that this conflict would not fall under the category of legal conflicts of constitutional nature that the Court is entitled to judge, or that this conflict would fall under this category and, in order to find a solution, to determine more precisely the nature of the political regime. The Court has chosen the second option. An option that proved to be an extremely difficult one, since the Decision no. 683/2012¹ was adopted with a majority of 5 to 4, and all the 4 judges that voted against felt the need to express separate opinions.

In order to resolve the notification of the Presidential Administration, the Court wished to decide first upon the fact whether the given situation corresponds to a legal conflict of constitutional nature. A positive answer in this regard was given by the Court invoking the letter exchange between the Minister of Foreign Affairs and a deputy minister from the Ministry of Foreign Affairs, on the one hand, and a presidential counselor, on the other hand. Thus, the conflict situation is, according to the Court, "born and present" due to certain concrete acts already committed, which means that this conflict cannot emerge only with the effective participation of the President to the European Council. From this article's perspective, it does not matter that much why this conflict has been labeled as having a legal nature, but mostly why it has been decided that it has a constitutional nature. In order to reach this conclusion, the Court stressed the fact that this conflict concerns the interpretation of article 80, paragraph 1 and article 102, paragraph 1 from the Constitution and, according to a previous decision of the Court, if the public authorities interpret and apply differently a constitutional disposition, the existence of a legal conflict of constitutional nature is proven². Thus, the answer to the first question (the existence of a conflict that the Court is entitled to judge) is strongly linked to the answer to the question that has to right to represent Romanian to the European Council.

¹ *Official Journal*, no. 701/12.10.2012.

² Decision no. 270/2008, *Official Journal*, no. 290/15.04.2008.

In order to provide an answer to the second question, the Court has analyzed first the nature of the European Council and of the representativeness of the EU Member States. The Court notices that it is not possible to partition the agenda of the European Council on certain issues that could possibly justify the participation of the President in certain situations and of the Prime Minister in other situations, because the mandate of representation of the state is "a permanent one and not one divided between two public authorities". Furthermore, the appointment of the right person to represent a Member State is aimed at "ensuring the representation of the Member State at the highest level by the competent public authority".

Why is it important to clarify the nature of a political regime in order to decide who participates to the European Council? The Court states that the participation at presidential level occurs due to the existing political regime (the case of France – semi-presidential regime and of Cyprus – presidential regime) or due to an agreement between the political actors (case of Lithuania – semi-presidential regime). As a consequence, if in Romania the Constitution does not divide the competences within the executive in order to affirm without any reservation the right of the President to participate to the European Council, if there is no agreement between the political actors as in Lithuania, it remains only the solution of interpreting the norms from the Constitution by the Court in order to determine the nature of the political regime.

In order to carry out this analysis, the Court based itself on certain interpretations from the doctrine. The first such interpretation used is that of Maurice Duverger, the first author who theorized semi-presidential regime¹. The Court quotes two of his contributions in order to affirm that the semi-presidential regime shall fulfill three conditions:

- The President to be elected by universal suffrage;
- The President to be empowered with considerable competences;
- The President to be assisted by a Prime Minister and ministers, part of the executive power, who can stay in power unless the Parliament opposes.

According to the Court, the first and the third conditions are fulfilled in the case of Romania, remaining to discuss the second condition based on the analysis that Robert Elgie dedicates to Duverger's model². The nature of "the considerable competences" is argued by the Court as follows:

"Along with other elements, in addition to the Romanian President's role in the foreign policy, as well as his capacity as head of the armed forces, president of the Supreme Council of National Defense, his competence to request the reexamining of a law, to notify the Constitutional Court, to designate the candidate for the Prime Minister seat, to appoint an interim Prime Minister, to appoint ministers, to request the prosecution of the members of the Cabinet, to consult the country's population through referendum, to make appointments to public offices, to grant individual pardons, *the political regime must be labeled as a semi-presidential one*" (our emphasis).

¹ Maurice DUVERGER, *Échec au roi*, Albin Michel, Paris, 1978; IDEM, "A New Political System Model: Semi-presidential Government", *European Journal of Political Research*, no. 8, 1980, pp. 165-187.

² Robert ELGIE, "Duverger, Semi-presidentialism and the Supposed French Archetype", *West European Politics*, vol. 2, no. 32, 2009, p. 248 et seq.

The Court did not limit itself to give this verdict based exclusively on the interpretation of the constitutional norms, but withheld to invoke its own jurisprudence¹ to prove the existence of the President's "considerable competences".

Regarding the participation to the European Council, the Court stated that, in accordance with art. 80, paragraph 1 of the Constitution, the President represent the Romanian state, which "allows him to draw the future guidelines that the state will follow in its foreign policy". Such a statement is, according to the Court, "legitimated by the representative character of his office, the Romanian President being elected by the citizens through universal, equal, direct, secret and freely expressed vote". The Prime Minister has the competence to ensure the achievement of the foreign policy, in accordance with art. 102, paragraph 1 from the Constitution, which means that the Government "is due to duly implement the measures the state has committed to". The representation of the state can be thus delegated by the President to the Prime Minister.

The Court has also analyzed the Parliament's Declaration no. 1/2012, which established a division of competences between the President and the Government in the field of foreign affairs. The Declaration credited the idea of a horizontal division of competences but this division is in practice vertical, between the definition of the foreign policy guidelines (President) and their implementation (Government). This Declaration was invoked by the Government in front of the Court in order to justify the participation of the Prime Minister to the European Council.

In a separate opinion, three judges of the Court consider that there was no legal conflict of constitutional nature to justify the Court's competence, but rather the problem of deciding who represents Romania, a problem of political nature "that needs to be settled by the Parliament when there are disagreements regarding this between the President and the Prime Minister", hence justifying the relevance of the Parliament's Declaration mentioned above.

In another separate opinion, it was considered that this Declaration cannot be subject to the Court's control, being a political act, and this act does not create a legal conflict of constitutional nature between the President and the Prime Minister. For this opinion to be fully argued, its author should have stated that the Court's labeling of the correspondence between the MFA's representatives and of the Presidential Administration as conflict generating, is not actually underlying any legal conflict of constitutional nature.

There was also a concurring opinion which was aimed at strengthening the existence of a legal conflict of constitutional nature. Thus, it was stated that the Parliament cannot notice and solve conflicts of constitutional nature, a competence belonging exclusively to the Constitutional Court. It was also considered that the EU is made of sovereign states, which actually impede the labeling of the issues on the agenda of the European Council as issues of internal politics. The best proof of the existence of such a conflict is that the Parliament has adopted a law regarding the cooperation between the Parliament and the Government in the field of European affairs which was challenged at the Court, a case unresolved by the Court at the time

¹ Decision no. 98/2008, *Official Journal*, no. 140/22.02.2008; Decision no. 799/2011, *Official Journal*, no. 440/23.06.2011; Decision no. 270/2008, *Official Journal*, no. 290/15.04.2008; Decision no. 384/2006, *Official Journal*, no. 451/24.05.2006; Decision no. 375/2005, *Official Journal*, no. 491/8.07.2005.

of the examination of the legal conflict of constitutional nature between the President and the Prime Minister (June 27, 2012), a conclusion valid also at the time of the publishing of this decision (July 12, 2012).

This last case was resolved through Decision no. 784/2012¹. This decision is of interest to this article only because it invokes the Decision no. 683/2012, stating that "in arguing this solution, the Court has withheld in essence, that the political regime established by the Constitution must be qualified as being a semi-presidential one". Through Decision no. 784/2012 the Court observed that a number of three articles from the law mentioned above are unconstitutional, among others the one stating that the representative of Romania to the European Council is established through an agreement between the Government and the Presidential Administration, which is contrary to the article no. 80, paragraph 2 from the Constitution, the reason being that only the President, according to the Decision no. 683/2012, can represent the State at the proceedings of the European Council. Note that this decision, as the previous one, was taken with a majority of 5 to 4, the 4 judges that voted against formulating a separate opinion. For our analysis, it is relevant the position expressed in this separate opinion according to which "qualifying the Romanian political regime as being a semi-presidential one does not involve also the president's exclusive right to engage the state within the European Council's reunions". Therefore, there is a consensus at the level of the Constitutional Court according to which the Romanian political regime is semi-presidential, the disagreements between the judges being generated by the contrary positions linked to the consequence of such a qualification in what concerns the representation of Romania to the European Council.

It is really necessary such an analysis of the Court in order to decide an issue that is undoubtedly important but, eventually, does not represent the essential aspect of the functioning of the institutions described by the Constitution. Given the weight of the moment, the irreconcilable tensions between the Prime Minister and the President, the Court had to settle this issue and to give it all the attention, in order not to see its legitimacy called into question. For trying to obtain a consensual solution, it was first tried to see which the lowest common denominator of the Court's judge's opinions is, and this was the nature of the political regime. The Court had on countless occasions the opportunity to affirm on this issue; each time it discussed the nature of the prerogatives of the two heads of the executive. But it never did it before the decision from 2012. The explanation lies in the quoted paragraph from the Decision no. 784/2012: all the Court's judges agreed that we are dealing with a semi-presidential regime. Otherwise, in which concern the consequences of this statement, all the aspects in litigation, the Court's judges were not able to agree.

We might be tempted to think that the Decision no. 683/2012 takes into account and thus clarifies all the doctrinal disputes, and that the qualification of the regime as semi-presidential will remain valid until a possible constitutional revision will modify substantially the way of defining it and the competences of the President and the Prime Minister. Actually, the Court's judges have put forward their own interpretation of the Constitution which is not entirely based on any of the interpretations formulated so far in the doctrine. None of the Romanian or foreign authors who took a stance on the current Constitution have clearly stated that it is a genuine semi-presidential regime, in Duverger's form. As a matter of fact, the Court does not invoke any author

¹ *Official Journal*, no. 701/12.10.2012.

apart from Maurice Duverger and Robert Elgie, both being quoted with contributions that are not related to Romania.

The first attempt to define the Romanian political regime belongs to certain authors who have actually been involved in the drafting of the Constitution¹. These do not question the existence of a semi-presidential regime, different from the parliamentary and the presidential ones. This regime is characterized by the election of the head of state through universal, direct or indirect (Finland's case) vote, the government is accountable to the Parliament, and the president's role is "important" (probably a reference to the "considerable competences" theorized by Duverger). Among all the features of the semi-presidential regime, only a few are found, according to the authors, in the Romanian Constitution. Most are found "under various forms meant to diminish the 'weight' of the political influence of the country's president". Our political regime is characterized as one where there is a limitation of "the presidential functions" and an adaptation of "certain solutions specific for parliamentary regimes". It is not actually specified which are these limitations and adaptations that differentiates the Romanian political regime from the presidential regime or the parliamentary one and which is the correspondent in the constitutional texts. These authors' conclusion is that

"our political regime can be characterized as an 'softened' or 'parliamentarised' semi-presidential regime, in the sense of increasing the contribution to the state's political life of the others factors of power and, especially, of the Parliament".

In other words, it is considered that the Parliament's competences would be a counterweight to those of the President and thus the political regime cannot be ascribed neither in the category of the parliamentary ones, nor in that of the semi-presidential ones, actually borrowing from both. This conclusion is not based on a comparative research of the competences of the President, Prime Minister, Government or Parliament in the semi-presidential and parliamentary regimes, in order to clearly see where the Romanian political regime is situated. It is true, on the other hand, that in 1992 such an analysis could not be carried out given the short period of time from the adoption of the Constitution that did not allow the creation of certain institutional practices and the Constitutional Court did not have yet the occasion to rule on certain provisions essential for the relations between the powers and within the state's powers.

The same opinion is supported also by Antonie Iorgovan in 2005. This is in fact completely in line with the opinion expressed in the paper above mentioned but, on the other hand, claims that once with the Constitution revision in 2003, the Romanian political regime became semi-parliamentary, fully agreeing with the opinion expressed by the authors of a commentary to the revised Constitution. For Antonie Iorgovan, the semi-presidential regime is identical to the semi-parliamentary one, as also resulted from the subtitle he uses: "Arguments of constitutional nature for semi-presidential or semi-parliamentary regime". If we read carefully the commentary to the Constitution, referred to by Antonie Iorgovan, we notice that its authors do not

¹ Mihai CONSTANTINESCU, Ion DELEANU, Antonie IORGOVAN, Ioan MURARU, Florin VASILESCU, Ioan VIDA, *Constituția României – comentată și adnotată*, Regia Autonomă "Monitorul Oficial", București, 1992, p. 184. The author of this comment is Florin Vasilescu.

consider the revision from 2003 as essential for the political regime change, but they rather propose that instead of the phrase "softened semi-presidential regime" the phrase "semi-parliamentary regime to be used"¹.

Antonie Iorgovan offers 12 arguments in favor of the existence of a semi-presidential regime:

– The Parliament and the President are elected through universal suffrage, being representative bodies at national level;

– The right of the President to dissolve the Parliament can be exercised only by respecting certain conditions;

– The Parliament can bring the President to account, by suspending him from office and subsequently by organizing a referendum;

– The Parliament can decide the impeachment of the President for high treason;

– The President can ask the people to express their will through referendum;

– The President appoints a candidate for the Prime Minister office and appoints the government based on a confidence vote granted by the Parliament;

– The government is accountable to the Parliament;

– The President and each Chamber can request the prosecution of the members of the Cabinet;

– The President does not have the right to legislative initiative;

– The President's refusal to pass a law can be exercised only once;

– The most important competences of the President in the field of foreign policy, of defense, of extraordinary states are conditioned, in their application, either by the will of the Government, either by that of the Parliament or they are under the control of the Parliament;

– The presidential decrees, issued in the application of the most important competences, are countersigned by the Prime Minister"².

In another commentary to the Constitution, that of Ștefan Deaconu, part of a book edited by two of the authors of the commentary to the Constitution quoted by Antonie Iorgovan, it is considered that

"a careful analysis of all the competences given by the Constitution to the President makes us notice that, in fact, from the point of view of the form of government, Romania is a semi-presidential republic, but with a lot reduced competences for the head of state"³.

This perspective is mainly based on the much reduced possibilities of the President to dissolve the Parliament. Ștefan Deaconu's opinion is different from those previously presented. In the same context Ștefan Deaconu makes a presentation of the political regimes of the 27 EU's Member States, and in the category "semi-presidential

¹ Mihai CONSTANTINESCU, Antonie IORGOVAN, Ioan MURARU, Elena Simina TĂNĂȘESCU, *Constituția României revizuită – comentarii și explicații*, All Beck, București, 2004, pp. 157-158.

² Antonie IORGOVAN, *Tratat de drept administrativ*, vol. I, All Beck, București, 2005, pp. 294-298.

³ Ioan MURARU, Elena Simina TĂNĂȘESCU (eds), *Constituția României. Comentariu pe articole*, C.H. Beck, București, 2008, p. 756.

republic" he includes Austria, Bulgaria, France, Finland, Ireland, Lithuania, Poland, Portugal, Romania, and Slovenia¹.

Tudor Drăganu didn't limit himself at considering that the Romanian political regime is part of a category or another, but he analyzed the issue of semi-presidential regimes in all its complexity. While presenting the political regimes, Tudor Drăganu takes into consideration also the semi-presidential regime, saying that

"the evolution of the constitutional life in certain countries led to the emergence of such hybrids systems, which, breaking the traditional models of both parliamentary and presidential regimes, tried to reach compromising solutions, situated somewhere in the middle of the road which separates them, some authors from the west literature do not hesitate to talk about 'semi-presidential regimes'"².

According to Tudor Drăganu, in this category Maurice Duverger could belong but, on the other hand, it is underlined the fact that in other authors' opinion (Marcel Prelot) we cannot talk about a new regime by reference to France's Constitution from 1958, but about an "eclectic regime"³. Also, the opinion according to which the French political regime wouldn't be semi-presidential, but of another nature is not singular, it has been claimed also by other authors more recently⁴.

Tudor Drăganu builds a complex analysis of the type of political regime established by the Romanian Constitution. First, there are highlighted the differences towards the French model regarding the President's prerogatives:

- The French President can rule through referendum above the Parliament's will, in Romania is needed the consultation of the Parliament;
- The French President has large competences in crisis situations, much more developed than his homologue;
- The French President appoints the Prime Minister, the Romanian one appoints only after the confidence vote from the Parliament;
- The French President signs the government's ordinances, in Romania they are signed by the Prime Minister and the minister in charge;
- The French President can dissolve the Parliament after the consultation of the Parliament and of the Prime Minister, the Romanian President can dissolve the Parliament in only one case⁵.

According to Tudor Drăganu, the 1991 Constitution's authors had the constant preoccupation of diminishing the role of the President, so as the Prime Minister to have the main role within the Executive, quoting Antonie Iorgovan who claimed that "the most important political function of the country is the function of Prime Minister"⁶. But on the other hand, this conception was not followed unitarily within

¹ *Ibidem*, p. 765.

² Tudor DRĂGANU, *Drept constituțional și instituții politice*, vol. I, Lumina Lex, București, 1998, p. 287.

³ Marcel PRÉLOT, *Institutions politiques et droit constitutionnel*, Dalloz, Paris, 1972, pp. 580-583.

⁴ Jean-Louis Quermonne considers that the French political regime is "dual presidential" (*Les régimes politiques occidentaux*, Seuil, Paris, 2006, p. 165).

⁵ Tudor DRĂGANU, *Drept constituțional...cit.*, vol. II, p. 226.

⁶ Antonie IORGOVAN, *Drept administrativ*, vol. III, Proarcadia, București, 1993, p. 56.

the Constitution, since the President was offered the function of mediator between the state's powers. Because of this prerogative, the President has more powers than the head of state from a parliamentary regime and less than the French President who also has the competence of mediation between the state's powers. In other words, the fact that this prerogative was taken from the French model is the best argument in favor of a semi-presidential regime, even if it is less developed than its inspirational model. Another difference from the parliamentary regimes is related to the President's competences that can be exercised by the President without the need of consulting the Prime Minister or another minister. Even in the cases where the counter-signature of the Prime Minister is needed, this condition is not drawn as in the case of parliamentary regimes.

Tudor Drăganu introduces in this analysis also the practices of the political regime that can influence its nature. In the case of a cohabitation of the President and the Parliament, the President's role as mediator is reduced at the mediation between the President and the Parliament. But, even in this case, the President "being up in the air, will have to resign with a passive role and to comply with the political line established by the Prime Minister in accordance with the Parliament"¹. In the case of such cohabitation, the political regime is not anymore semi-presidential, but it tends to the characteristics of the parliamentary regime. This tendency can be observed not only in the case of cohabitation, but also in the case when the President decides to have an approach typical for a head of state appointed by the Parliament. The example given by Tudor Drăganu is the case when the President appeals to the Prime Minister to countersign all his documents². All these commentaries do not determine Tudor Drăganu to affirm that the Romanian political regime would be included in the category of parliamentary regimes, but he claims very clear that this regime is semi-presidential³.

Dana Tofan also makes a thorough analysis of the type of political regime. Starting from three different views, that of the softened semi-presidential regime (Florin Vasilescu), that of the parliamentary-regime (Ioan Vida⁴) and that of the semi-presidential regime (Tudor Drăganu), the author considers that

"a strong personality could contribute effectively, in time, to increase the institution's position, mostly because of the way of regulation of the presidential competences which, even if often conditioned, leave at the President's disposal, in an enough number of situations, a large margin of appreciation, in the decision that will be taken".

Dana Tofan thus considers that, because of the political practices, the Romanian regime can wear not only the cloths of the semi-presidential regime but also those of the parliamentary one but also [or] those of the presidential one. The same as for Tudor Drăganu, essential in defining the nature of the political regime, is for Dana Tofan the President's function of mediation. The author issues an opinion extremely interesting

¹ Tudor DRĂGANU, *Drept constituțional...cit.*, vol. II, p. 233.

² *Ibidem*, p. 235.

³ *Ibidem*, p. 229.

⁴ Ioan VIDA, *Puterea executivă și administrația publică*, Regia Autonomă "Monitorul Oficial", București, 1994, p. 38.

which is worth being reported: that article would be a "pact" between two political views from the Constituent Assembly, the republican one and the monarchical one, the last one being justified because of the fact that the President, like the constitutional monarch, cannot have a political affiliation¹

Constanța Călinoiu and Victor Duculescu say unequivocally the fact that Romania is a "semi-presidential republic", because of the way of regulation of the President's prerogatives².

Dan Claudiu Dănișor is making only a classification of the political regimes, without expressing if Romania is or not part of this category. In this view, there are only two features of the semi-presidential regime: a president elected through universal vote, a Prime Minister and a government accountable to Parliament. The first feature is to be found also within the presidential regimes, but not also the second one. Dan Claudiu Dănișor insists on the oscillations of the semi-presidential regime caused by the political practices but he didn't mention that in this way the regime becomes presidential or parliamentary. There are four this kind of situations that makes the difference in which concern the concrete exercise of the relations between the powers:

- The majority (parliamentarian) is on the same side with the President and recognize it as chief;
- The President is member of the majority but he's not his head;
- The majority is opposed to the President;
- There is no majority.

Dan Claudiu Dănișor does not limit only at presenting Duverger's theory, but mentions also the criticism to the notion of semi-presidential regime theorized by Georges Burdeau or Bernard Chantebout³.

Genoveva Vrabie's analysis starts from the Constitution's article that describes the President's mediation. According to her, there is a contradiction between this provision and the rest of the articles from the Constitution that are describing the President's role. Genoveva Vrabie fully agrees Tudor Drăganu's approach on this topic, including the differences between the Romanian and French political regimes. The French model is imported but not entirely, which means that "a too large hat is put on the Romanian President's head". Genoveva Vrabie claims that "the Romanian political regime is, as the French one, a mixed regime, but differently articulated". It is not used the phrase "semi-presidential regime", but that of "mixed regime", which denotes, in our opinion, the author's intention of keeping a distance from the terminology introduced by Duverger and of having a wider opening towards the alternative expressions that describe this type of regime⁴.

Simina Tănăsescu considers that the Romanian political regime is semi-presidential but, from the way that the President's prerogatives had been exercised over the time, we are on a slippery slope, so that "it is possible that this system will be considered, in the future, purely presidential". The author believes that there is a

¹ Dana APOSTOL TOFAN, *Puterea discreționară și excesul de putere al autorităților publice*, All Beck, București, 1999, pp. 277-278.

² Constanța CĂLINOIU, Victor DUCULESCU, *Drept constitutional și instituții politice*, Lumina Lex, București, 2005, p. 188.

³ Dan Claudiu DĂNIȘOR, *Drept constitutional și instituții politice*, vol. I, C.H. Beck, București, 2007, pp. 489-491.

⁴ Genoveva VRABIE, *Le régime politique et constitutionnel de la Roumanie post-décembriste*, Institutul European, Iași, 2010, pp. 332-333.

great discrepancy between the President's prerogatives, as they are defined by the Constitution, and his real power, this fact being possible because of the Constitution's ambiguities:

"The difference between the constitutional and the real powers of the head of state can offer an idea of how impossible is to certainly qualify the Romanian political system. Over the time, the Romanian Presidents interfered with the Parliament's constitutional powers, through ways being often at the limit of unconstitutionality or they interfered with the decision power of the Government or of the Prime Minister in domains where the fundamental law does not operate with a clear separation of competences"¹.

Camelia Tomescu confines to assert that "the system of representation of the state's powers presents itself into a semi-presidential version" and to mention the opinions from the doctrine according to which the Romanian political regime is "softened semi-presidential"². The author presents the features of the semi-presidential regime about which she considers that it had borrowed from the parliamentary regime "the existence of a collegial and solidary government, accountable to the Chamber elected through universal direct vote", and from the presidential regime "the institution of the elected President ...through universal direct suffrage and who has not only the authority conferred by this kind of election, but often also very important powers". These borrowed aspects lead to the existence, within the semi-presidential regime, of "certain incoherencies from the functional point of view"³. According to Camelia Tomescu, the European countries' tendency is to go not toward the version of the semi-presidential regime, but toward regimes where the government's role is considerable, and a perfect semi-presidential model, which fosters stability in all conditions, does not exist. The same author presents in detail in another contribution the semi-presidential regime and the criticism of this concept, among which that one referring to the fact that the President is not elected through universal suffrage in all the states (Finland, Ireland) which are part of this category. Camelia Tomescu presents the President's role within the semi-presidential regime, emphasizing the relations with the Prime Minister, especially his designation. In the category of the countries that are presented there are also the countries which were not analyzed by Duverger (Romania, Slovenia, Bulgaria, Lithuania, and Poland)⁴.

The semi-presidential regime is treated in the Romanian doctrine not only in terms of public law but also from the perspective of the political science. Taking a classical distinction, Alexandru Radu considers that there are four types of democratic political regimes: presidential, semi-presidential, parliamentary and directorial. The semi-presidential regime is considered as a "mixed formula of government", and the mixed nature is regarded as its weak point. The problem of such a regime is, according to Alexandru Radu, that the parliamentary majorities do not always generate

¹ Simina TĂNĂSESCU, "The President of Romania, or the Slippery Slope of a Political System", *European Constitutional Law Review*, no. 4, 2008, pp. 64-97.

² Camelia TOMESCU, "Raporturile dintre șeful statului și primul-ministru în țările Uniunii Europene", *Revista de drept public*, nr. 3, 2009, pp. 59-60.

³ *Ibidem*, p. 55.

⁴ Camelia-Rodica TOMESCU, *Raporturile dintre Guvern și Parlament*, C.H. Beck, București, 2012, pp. 216-228.

political stability¹. The merit of Alexandru Radu's analysis is that of introducing in the Romanian literature dedicated to the semi-presidential regime two authors of political science: Arend Lijphart and Giovanni Sartori. According to Lijphart, there are only presidential and parliamentary regimes, and the category semi-presidential is challenged on the grounds that the countries that would enter into this could be assimilated to the first two categories, once with the answer to the question who is the real head of the government². Giovanni Sartori admits the existence of a separate category of semi-presidential regime and considers that this category is characterized by the following features:

- The President is elected through popular vote – directly or indirectly – for a preset time;
- The President shares the executive power with a Prime Minister and enters therefore into a dual authority structure;
- The President is independent from the Parliament but he cannot govern alone;
- The Prime Minister and the Cabinet are independent from the President, to the extent they are subjected to both parliamentary trust and distrust, and to the extent that they need the support of a parliamentary majority;
- The dualistic authority structure admits different balances and arrangements of power within the executive, so that "the autonomy potential" of each component of the executive subsists.

For Sartori, the semi-presidentialism is better than the presidentialism and more applicable than the parliamentary but it is not "the best". Sartori says that the semi-presidentialism has many virtues and it presents a different type of political regime, "the alternating presidentialism", without explaining which of the two regimes would be preferable³.

Alexandru Radu has the merit of presenting, for the first time in the Romanian thematic literature, a comparison between Duverger's model of semi-presidential regime and that one of Sartori: if for Duverger the semi-presidential regime "represents an alternation between presidential and parliamentary phases", for Sartori the head of the executive varies depending on how the parliamentary majorities change. For Alexandru Radu, this "oscillation of heads" is "the solution for blocking the potential conflict typical for every two-headed power structure"⁴. Also, Alexandru Radu presents the theory that denies the existence of the semi-presidential regime, belonging to Matthew Shughart and John Carey; they consider that instead there are regimes that ensure the supremacy of the Prime Minister – the semi-presidential regime or of the president – parliamentary-presidential regime⁵.

Two other authors dealing with the Romanian political regime from the perspective of the political science and starting from the premise of its semi-presidential nature

¹ Alexandru RADU, *Sisteme politice contemporane. Forme de guvernare în 29 de state*, C.H. Beck, București, 2010, pp. 24-25.

² Arend LIJPHART, *Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries*, Yale University Press, New Haven and London, 1999, p. 121.

³ Giovanni SARTORI, *Comparative Constitutional Engineering. An Inquiry into Structures, Incentives and Outcomes*, 2nd edition, New York University Press, New York, 1997, pp. 131-132.

⁴ Alexandru RADU, *Sisteme politice contemporane...cit.*, p. 30.

⁵ Matthew S. SHUGHART, John M. CAREY, *Presidents and Assemblies. Constitutional Design and Electoral Dynamics*, Cambridge University Press, Cambridge, 1992.

are Bogdan Dima¹ and Raluca Mariana Negulescu² who are providing summaries of the approaches from the thematic literature, both foreign and Romanian authors.

One of the most important foreign authors who have elaborated on the topic of the nature of the Romanian political regime and who produced, together with Tudor Drăganu, one of the most complex analysis on this topic is Giovanni Sartori. He published two articles on this theme, the first of them being translated into Romanian and can be found in the annex of the book *Comparative Constitutional Engineering*³.

Sartori is the only author (excepting Ioan Vida, in the Romanian doctrine) who argues that the Romanian political regime is parliamentary and not semi-presidential. His arguments are based on the Constitution's provisions:

- The President's function of mediator is a typical one for the parliamentary-regime, in the variations of presidential and semi-presidential regimes the President is part of the political actors' game;

- The President has no independent power to appoint the Prime Minister, but only through consultation with the parliamentary political parties. In the case of a reshuffle, the ministers that are to be included into the Cabinet are proposed by the Prime Minister (at the time Sartori was editing this article, the Constitutional Court hadn't decided yet that the President has the right to refuse, only once, such a proposal and to ask the Prime Minister to make motivated another proposal⁴);

- The President can consult the Government with regards to the urgent matters and of utmost importance and can participate at certain Cabinet reunions. These are the specific prerogatives of a head of state in semi-presidential regimes, but the phrase "can" has the meaning of a weak feature of the political regime;

- The dissolution of the Parliament by the President can be done only consulting it, which points out to a feature of parliamentary regimes;

- The referendum can be called for by the President with the consultation of the Parliament. Calling for a referendum is typical to presidential regimes, but Sartori argues that this institution can be qualified as pertaining to a political regime or another only by examining the way it is applied⁵.

Sartori also offers an explanation for choosing this institutional design. Romania has experienced throughout communism the most radical form of presidentialism and desired to create a two-headed executive, in which a mutual control between the two heads of the executive exists.

Ioan Stanomir is one of the few Romanian authors⁶ that mentions Giovanni Sartori's contribution to the analysis of the nature of the Romanian political system, placing in parallel Sartori's analysis with that of Tudor Drăganu, but initially avoids to state whether he considers the Romanian political system as semi-presidential or

¹ Bogdan DIMA, "Semiprezidențialismul românesc postdecembrist", *Sfera Politicii*, no. 139, 2009, pp. 14-28.

² Raluca Mariana NEGULESCU, "Reflecții – semiprezidențialismul în România", *Sfera Politicii*, nr. 139, 2009, pp. 29-36.

³ Giovanni SARTORI, "Sul sistema costituzionale romeno", *Studia Politica. Romanian Political Science Review*, vol. II, no. 1, 2002, pp. 9-12; IDEM, "Alcuni chiarimenti sul semiprezidenzialismo", *Studia Politica. Romanian Political Science Review*, vol. III, no. 3, 2003, pp. 617-620.

⁴ Decision no. 98/2008, *Official Journal*, no. 140/22.02.2008.

⁵ Giovanni SARTORI, "Sul sistema costituzionale romeno", cit.

⁶ See also Raluca Mariana NEGULESCU, "Reflecții...cit.".

parliamentary¹. In a book published one year later, Ioan Stanomir distances himself from Giovanni Sartori's model and clearly states that the Romanian political regime is semi-presidential:

"The reading applied by Giovanni Sartori to the Romanian Constitution is edifying, even though the hypothesis of the impossibility to describe Romania as typical semi-presidential system is amendable: even if it departs from the French precedent, Romania does not remain less important as a softened semi-presidential version. The application of Sartori's original criteria is perfectly possible in the Romanian case"².

Another author that has addressed the nature of the Romanian political system is Olivier Duhamel. When discussing about the "new semi-presidential regimes from Eastern Europe", Duhamel considers that we are dealing with heads of state incapable of creating political parties to support them, with the exception of Romania, where President Ion Iliescu, supported by a parliamentary majority, revoked the Prime Minister Petre Roman. However, Duhamel considers that the semi-presidential regime practiced in Romania is "slightly special", because the first ballot of the presidential elections coincides with the parliamentary elections³. Since the date of the drafting of these considerations (1993), both provisions have been modified, currently the revoking of the Prime Minister by the President being forbidden by the Constitution and the presidential and parliamentary elections being delayed due to the different lengths of the terms in office (5, respectively 4).

Oliver Duhamel is the author of a typology of "systems", opposed to that of the "regimes", based on the means of exercising the power on accordance with international practices. Thus, Duhamel considers that there are three types of such systems: parliamentary (the government is the result of a party coalition that has not been designated by the voters, but was rather constituted after the elections), governmental (a parliamentary majority is headed by a leader that is also the incumbent Prime Minister) and presidential (the Government is under the authority of a head of state elected directly or indirectly)⁴. The attempt to adapt Duhamel's typology to the Romanian political regime indicates that it should theoretically be presidential, but practically it alternates between the governmental and the parliamentary systems⁵, which proves once more the hybrid and unique character of this regime.

The Romanian political regime has been subject to two analyses that dealt with a possible constitutional revision: the first one had an institutional character, being the Report of the Presidential Commission on the Analysis of the Political and Constitutional Regime in Romania (CPARPCR) from 2009, and the second one, the Report of the Commission for a New Constitution (CON) from 2012, is the result of a

¹ Ioan STANOMIR, *Constituționalism și postcomunism. Un comentariu al Constituției României*, 2nd edition, Editura Universității din București, București, 2007, p. 123 et seq.

² IDEM, "Regândind Constituția: teme și interogații", in Radu CARP, Ioan STANOMIR, *Limitele Constituției. Despre guvernare, politică și cetățenie în România*, C.H. Beck, București, 2008, p. 265.

³ Olivier DUHAMEL, *Les démocraties*, Seuil, Paris, 1993, p. 179.

⁴ *Ibidem*, pp. 275-276.

⁵ Radu CARP, "România: sistem politic și regim constituțional", *Sfera Politicii*, no. 44, 1996, pp. 14-16.

series of public debates initiated by the Horia Rusu Foundation, as a reaction to the first report. None of these initiatives was fully assumed by any political party, even though the foundation is close to the nature of a think-tank of a political party.

CPARPCR Report provides an overview of the existing political regimes, among which also the semi-presidential one. It is stated that there are three types of such regimes: presidential regimes, regimes with heads of state that have a ceremonial role and the French system of equitably dividing the prerogatives between the chiefs of the executive. The conclusion of the authors of this report is that Romania can choose between two evolution paths of the semi-presidential regime, excluding the presidential alternative. The Report claims that there are both advantages and disadvantages of the parliamentary and semi-presidential regimes. The main advantages of choosing a French-type semi-presidential regime would be, according to the authors of this Report:

- The resolution of constitutional crises becomes possible by simplifying the right of dissolving the Parliament;

- Establishment of a new type of balance between the President and the Prime Minister;

- The President, by means of dissolving of the Parliament, can benefit from a stable political majority that can help him implement the program underlying his election¹.

CON Report is built on the same logic, of presenting the advantages and disadvantages of the three types of political regimes. The terminology differs, the one specific to political science being opted for (parliamentary, presidential, semi-presidential). After an overview of the definitions of semi-presidentialism, Antonie Iorgovan is also quoted with his attempt to define the features of the Romanian version of political regime. The phrase "softened semi-presidential" does not belong to Antonie Iorgovan, but to Florin Vasilescu. According to the opinion of the authors of the CON Report, the Constitution was grounded on a vision concerning the way the President can exercise his competences, a vision that has been denied into practice, the Presidents exercising a "political and personal influence far larger than the constituent legislator had initially desired to offer"². Unlike the CPARPCR Report that made more recommendations regarding the change of the current political regime with a different one, CON Report makes such a recommendation: "A solution is the modification of the fundamental law and the switch to a rationalized parliamentary system"³. What happens with such a recommendation if Giovanni Sartori proved right and we are facing a parliamentary regime instead of a semi-presidential one?

More than 22 years after the adoption of the Constitution from 1991, the doctrine of public law and the authors of political science – the paper does not claim to exhaust all these contributions – have not yet managed to agree on the nature of the political regime established by this Constitution. The features of semi-presidential regime practiced in other countries have been only taken over partially or altered in the Romanian Constitution, which led to the stated opinion that we are currently dealing with a softened or parliamentarised semi-presidential regime. Giovanni Sartori's

¹ *Raportul Comisiei Prezidențiale de Analiză a Regimului Politic și Constituțional din România. Pentru consolidarea statului de drept*, C.H. Beck, București, 2009, p. 37.

² Bogdan DIMA, Elena Simina TĂNĂSESCU (eds.), *Raportul Comisiei pentru o nouă Constituție. Reforma constituțională: analiză și proiecții*, Universul Juridic, București, 2012, p. 48.

³ *Ibidem*, p. 184.

opinion that pleads for the existence of a parliamentary system is rather singular, but rooted in a thorough analysis of the Romanian Constitution in comparison to other constitutions and political regimes. The Constitutional Court has qualified this political regime as being semi-presidential through Decision no. 683/2012, being the only consensual element between the 9 judges summoned to resolve a conflict situation between the two heads of the executive. What has generated consensus at the Court's level is not consensual among all authors addressing this problem. Proceeding as such, the Court has resolved the case it was called upon to solve, but this does not mean that the problem concerning the nature of the Romanian political regime is no longer open, as long as we will be subject to the current Constitution.